

## **§ 32.20**

person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of such person's authority to execute the claim on behalf of such claimant in accordance with paragraph (b) (1) and (2) of this section—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally designated representative, the evidence shall be a statement describing such person's relationship to the claimant or the extent to which such person has the care of such claimant or such person's position as an officer of the institution of which the claimant is an inmate or patient. The Bureau may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

## **§ 32.20 Claims.**

(a) Claimants are encouraged to submit their claims on OJP Form 3650/5 for death benefits, or the disability benefits claim form, which can be obtained from: Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Washington, DC 20531.

(b) Where an individual files OJP Form 3650/5 for death benefits, or the disability benefits claim form, or other written statement with the Bureau which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by a permanently and totally disabled public safety officer or on behalf of survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification unless the time for filing is extended by the Director for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person

## **28 CFR Ch. I (7–1–05 Edition)**

legally designated to execute a claim under § 32.19.

## **§ 32.21 Evidence.**

(a) A claimant for any benefit or fee under the Act and this part shall submit such evidence of eligibility or other material facts as is specified by this part. The Bureau may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and this part has submitted no evidence or insufficient evidence of any material issue or fact, the Bureau shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request the claimant to submit such evidence within a reasonably specified time. The claimant's failure to submit evidence on a material issue or fact as requested by the Bureau shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

## **§ 32.22 Representation.**

(a) A claimant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Bureau must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee the

## Department of Justice

## § 32.23

petitioner may charge or receive, if any, shall be determined by the Bureau on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Bureau assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Bureau, a representative, upon completion of the proceedings in which the representative rendered services, must file with the Bureau a written petition containing the following information—

(1) The dates the representative's services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee the representative desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death or permanent and total disability before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled the representative to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of the claimant's opportunity to submit his or her comments on the petition to BJA within 20 days.

(f) No fee determination will be made by the Bureau until 20 days after the date the petition was sent to the claimant. The Bureau encourages the claimant to submit comments on the petition to the Bureau during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to

provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required to render the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Bureau and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Bureau shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which had previously been obtained by the Bureau, and no reimbursement shall be allowed for expenses incurred in establishing or pursuing the representative's application for approval of the fee.

### DETERMINATION, HEARING, AND REVIEW

#### § 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Bureau shall notify each claimant of its disposition of his or her claim. In those cases where the Bureau has found the claimant to be ineligible for a benefit, the Bureau shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.